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Nationality of natural persons in relation to the succession of States

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Note by the Secretariat: Comments and observations received from Governments

Summary

The present note contains the comments and observations of six Governments on the question of a convention on nationality of natural persons in relation to the succession of States, submitted pursuant to General Assembly resolutions 54/112 of 9 December 1999 and 55/153 of 12 December 2000.

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I. Introduction

1. At its fifty-first session in 1999, the International Law Commission adopted draft articles on nationality of natural persons in relation to the succession of States, and recommended that they be adopted by the General Assembly in the form of a declaration.

2. Subsequently, in paragraph 3 of resolution 54/112 of 9 December 1999, the General Assembly invited Governments to submit comments and observations on the question of a convention on nationality of natural persons in relation to the succession of States, with a view to the General Assembly considering the elaboration of such a convention at a future session. Reiterating this invitation in resolution 55/153 of 12 December 2000, to which the text of the draft articles was annexed, the General Assembly decided to include in the provisional agenda of its fifty-ninth session an item entitled "Nationality of natural persons in relation to the succession of States". By note verbale dated 23 January 2004, the Secretariat relayed to Governments the invitation contained in resolutions 54/112 and 55/153.

3. As of 20 July 2004, replies had been received from the Governments of the following countries (dates of submission in parentheses): Austria (22 March 2004), Chile (19 May 2004), Colombia (28 April 2004), El Salvador (1 June 2004), Germany (6 April 2004) and Slovenia (1 June 2004). These replies are reproduced in section II below, organized by topic. Additional replies received will be reproduced as addenda to the present report.

II. Comments and observations received from Governments

Austria

General comments

Austria now tends towards the adoption of the draft articles as a convention at the fifty-ninth session of the General Assembly.

Chile

[Original: Spanish]

General comments

1. Having examined the provisions of the 26 articles of the aforementioned draft, Chile considers that in general, from the standpoint of international law, those provisions adequately cover the basic principles that should govern situations arising with respect to the nationality of natural persons in the event of a succession of States.

2. The draft recognizes, first of all, that questions of nationality fall essentially under internal law, and therefore urges States to enact legislation on nationality and other connected issues arising in relation to the succession of States. In addition, the draft seeks not to impose a specific nationality on persons in the territories concerned, by providing a right of option, so that such persons may voluntarily

choose between two or more nationalities. It should be pointed out that, in cases where a person is required to renounce the nationality of one State in order to acquire the nationality of another, there are guarantees that such renunciation cannot cause a situation of statelessness, even if only temporarily.

3. Accordingly, the draft articles prepared by the International Law Commission constitute a useful guide for the treatment of the topic, whatever definitive form is chosen for their adoption, whether that of a declaration or that of a convention prepared at a future session of the General Assembly.

Colombia

[Original: Spanish]

General comments

1. The Government of Colombia could support General Assembly resolution 55/153 of 12 December 2000, entitled "Nationality of natural persons in relation to the succession of States", and considers it to be a viable core text for the elaboration of an international convention, given that it is in keeping with domestic and international regulations regarding nationality.

Preamble

2. The preamble to the resolution emphasizes that nationality is essentially governed by internal law within the limits set by international law.

3. In the case of Colombia, it should be borne in mind that international law not contained in provisions binding on Colombia cannot be invoked in opposition to the Political Constitution.

Article 13

4. Concerning article 13, the Government suggests studying the possibility of adding that the child of a person concerned, who is in the situation covered in article 13 may exercise the right to choose between the nationality of the State concerned on whose territory that child was born and the nationality of the father or mother concerned.

Article 20

5. The Government believes that article 20 should be extended to include the possibility of part of the territory of a State becoming part of another State for a reason other than the transfer of territory by the predecessor State.

6. This possibility is also not covered by article 24, which is limited to the separation of part of the territory of a State to form one or more successor States, rather than to form part of a pre-existing State.

7. Along these lines, the first part of article 20 could be amended as follows: "When part of the territory of a State becomes part of another State, the successor State ...".

Other articles

8. In order to avoid interpretations that might make some of the Convention's provisions inapplicable, it would be useful to define the terms "vínculo apropiado" ("appropriate connection", contained in articles 11, 22, subparagraph (b) (i) and (ii), 24, subparagraph (b) (i) and (ii) and 25, paragraph 2 (c), and "effective link", used in article 19, paragraph 1.

El Salvador

[Original: Spanish]

General comments

1. The Permanent Representative of El Salvador emphasizes the continuing significance of the nationality of natural persons in relation to the succession of States in an international instrument of worldwide scope, especially in view of the fact that the right to a nationality is one of the human rights of every natural person.

2. El Salvador has a special interest in the nationality of natural persons in relation to the succession of States, this question being relevant to its own situation in respect of persons who, following the delimitation of the land boundary between El Salvador and Honduras, based on the judgment of the International Court of Justice of 11 September 1992, are living in territory which previously fell under the jurisdiction of another State.

3. Bearing in mind that it may be useful for the purpose of the new convention which the United Nations is seeking to frame, El Salvador submitted to the Secretariat the text of the Convention on Nationality and Acquired Rights in the Areas Delimited by the Judgment of the International Court of Justice of 11 September 1992, signed by El Salvador and Honduras on 19 January 1998.[1]

Germany

General comments

1. Germany appreciates the valuable work of the International Law Commission on this topic and supports, in general terms, the draft articles annexed to resolution 55/153.

Article 2

2. Germany suggests to add, in article 2, a definition of the term "habitual residence", considering that this term is frequently used in the text (arts. 5, 8, 14, 20, 22, 24, 25). The suggested definition of the term "habitual residence" is "a stable factual residence".

[1] The text of the Convention is available in the Codification Division of the Office of Legal Affairs of the Secretariat.

Article 12

3. On the other hand, Germany believes that it is unnecessary to include a definition of the term "family" (art. 12). Although the understanding of the term "family" may vary among different cultures and regions, it can be assumed that successor States share a common understanding of the term, due to their cultural and regional proximity.

Slovenia

General comments

1. The Republic of Slovenia supports the adoption of a convention that would govern the rules and obligations of States within the context of succession with respect to citizenship status issues. On the basis of the experiences gained in the implementation of the Citizenship of the Republic of Slovenia Act, adopted on the day of independence, and in the absence of political will on the part of the other successor States to regulate this issue in succession negotiations, the Republic of Slovenia believes that the adoption at the United Nations level of a convention containing the principles and rules for the regulation of the citizenship of natural persons would represent a significant development in international law, while also providing an instrument that leaves no doubt as to whether the regulation is just or whether it is in conformity with international law. It should also be noted in this regard that the Council of Europe is also working on the adoption of a similar document, which will, however, apply only to legal statelessness upon succession.

2. Pursuant to articles 26 and 27 of the Vienna Convention on the Law of Treaties, every treaty in force is binding upon the parties to it and must be performed by them in good faith, and a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. Assuming that the Republic of Slovenia would accede to the convention and taking into account the above provisions of the Vienna Convention, the Ministry of the Interior conducted a preliminary review of the conformity of the Slovenian legislation governing citizenship and alien status with the draft convention. It is not evident from the draft convention whether the purpose of the convention is to regulate the issue of citizenship in relation to the succession for the period prior to the entry into force of the convention for a particular country or to regulate only those citizenship cases which arise after the entry into force of the convention for a particular country. Taking into account the commentary to article 7 with respect to the general principle of international law of the non-retroactivity of legislation and your comment, it may be concluded that the Republic of Slovenia supports the adoption of such a convention as an advance guide to States. For this reason, and pursuant to article 28 of the Vienna Convention on the Law of Treaties stipulating that, unless a different intention appears from the treaty or is otherwise established, a treaty does not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party we propose, in order to avoid potential ambiguities, that the draft convention also include a provision clarifying that it applies to cases of succession that will occur after the entry into force of the convention, leaving open the possibility for States to give their consent, upon accession to the convention, to the application of the convention's provisions to the relations that arose prior to its entry into force.

Article 1

3. Article 1 of the draft convention guarantees individuals who, on the date of succession, had the citizenship of the predecessor State, the right to citizenship of at least one of the successor States. Under article 40 of the Citizenship of the Republic of Slovenia Act, the Republic of Slovenia guaranteed the right to citizenship to all those persons who had the citizenship of the former republics of the former Socialist Federal Republic of Yugoslavia and had permanent residence in the Republic of Slovenia on 23 December 1990 and actually lived in the country; the acquisition of Slovenian citizenship did not require the relinquishing of the previous citizenship. Under article 39 of the Citizenship of the Republic of Slovenia Act, the Republic of Slovenia recognized *ex lege* citizenship of the Republic of Slovenia to all those persons who had the citizenship of a constituent unit of the predecessor State on the day of independence, irrespective of whether they also had the citizenship of any other country.

Article 3

4. Article 3 of the draft convention limits the application of the rules to those effects of a succession of States occurring in conformity with international law and, in particular, with the principles of international law embodied in the Charter of the United Nations. The dissolution of the Socialist Federal Republic of Yugoslavia has been confirmed by resolutions of the United Nations Security Council, decisions of European Union bodies, the decisions of the Badinter Arbitration Commission as well as by the Agreement on Succession Issues (*Official Gazette of the Republic of Slovenia*, IT 20/02). The rules of the convention may therefore apply to the successor States of the Socialist Federal Republic of Yugoslavia.

Article 4

5. Article 4 binds States to take all appropriate measures to prevent persons who, on the date of the succession of States, had the citizenship of the predecessor State, from becoming stateless as a result of such succession. Under the Citizenship of the Republic of Slovenia Act, the Republic of Slovenia instituted an initial body of citizenship by adopting the principle of legal continuity with the regulations that governed citizenship prior to independence. Upholding the principle of free individual will as well as the individual's legal and actual connection with the Republic of Slovenia, persons with the citizenship of the predecessor States were guaranteed the possibility of acquiring Slovenian citizenship on the basis of a declaration of will (art. 40 of the Citizenship of the Republic of Slovenia Act).

Article 5

6. Article 5 stipulates that persons concerned having their habitual residence in the territory affected by the succession of States are presumed to acquire the citizenship of the successor State on the date of such succession. Taking into account the principle of avoiding and preventing statelessness and the principle of the right to citizenship embodied in the Universal Declaration of Human Rights, especially for the period between the date of succession and the entry into force of internal legislation, this provision contains the presumption of the citizenship of the persons concerned, albeit it is contestable. The purpose of the presumption of citizenship as it derives from the commentary is to avoid statelessness for the period

from the date of succession to the adoption of internal legislation or any potential inter-State agreement with respect to citizenship issues. The Republic of Slovenia guaranteed persons who had permanent residence in the territory of the Republic of Slovenia at the time of succession the possibility of acquiring Slovenian citizenship (art. 40 of the Citizenship of the Republic of Slovenia Act), while persons with only temporary residence in the Republic of Slovenia were able to regulate their status on other legal bases. It should also be pointed out that the legislation which governed citizenship in the territory of the former Socialist Federal Republic of Yugoslavia did allow for statelessness. Persons who, at the time of dissolution, had the citizenship of other republics were, taking into consideration the internal legislation of those republics, continuously considered as citizens of the successor States[2] in accordance with the legislation adopted by the successor States.

Article 6

7. Article 6 binds States to enact, without undue delay, legislation on citizenship and other connected issues arising in relation to the succession of States consistent with the provisions of the draft convention. The Republic of Slovenia fulfilled this obligation by adopting the Citizenship of the Republic of Slovenia Act and other independence laws. In this context, reference may be made to article 13 of the Constitutional Act Implementing the Basic Charter on the Independence and Sovereignty of the Republic of Slovenia (*Official Gazette of the Republic of Slovenia*, No. 1/91-1).

Article 7

8. In accordance with article 7, the recognition of citizenship as well as the acquisition of citizenship on the basis of an option must take effect on the day of succession, or else persons would remain without citizenship in the period between the date of succession and the date of recognition or acquisition of citizenship. Since legal statelessness was not possible in the system of the former Socialist Federal Republic of Yugoslavia, such a situation ought not to arise after the dissolution of the Socialist Federal Republic of Yugoslavia. For this reason, the Republic of Slovenia would not have any obligations except if the notion of statelessness is understood more broadly to include actual, in addition to legal, statelessness, where the question regarding the reasons for such statelessness would arise (refusal to recognize the citizenship of members of other ethnic groups who, under statute, otherwise count as citizens of, for example, Croatia, Bosnia and Herzegovina, Macedonia or the former Federal Republic of Yugoslavia).

Article 8

9. Article 8 does not bind States to recognize citizenship to those persons that have their habitual residence in another country and the citizenship of that or another country. A successor State must not recognize citizenship to a person with

[2] Article 30 of the Act of Croatian Citizenship (*National News of the Republic of Croatia*, No. 53 of 8 October 1991); article 46 of the Act on Yugoslavian Citizenship (*Official Gazette of the Federal Republic of Yugoslavia*, No. 33/96); article 28 of the Act on the Citizenship of Bosnia and Herzegovina (*Official Gazette of Bosnia and Herzegovina*, No. 12/92 and article 46 of the Act on the Citizenship of the Republic of Macedonia (*Official Gazette of the Republic of Macedonia*, No. 67/92).

habitual residence in another country against the person's will, except if such person would otherwise remain without citizenship. Since, according to the view deriving from the commentary to this provision, there is no reason not to apply these two obligations also in the case of a person with habitual residence in another successor State, the obligations of the Republic of Slovenia may extend also to persons who provide proof that they are without citizenship (de facto); such an explanation is supported also by the term "another State" used in this article. In article 2, which explains the terms used in the draft convention, the term "another State" is not clarified while subparagraph (e) explains the term "third State", which for the purposes of the draft convention means any State which is neither a successor nor a predecessor State. The use of the term "another State" in the draft provision indicates an intention to include, in the group of States not bound by this provision, not only so-called "third States" but also other successor States. Given such an extensive understanding of the term "another State" as used in article 8, the obligation of the country that emerged as a consequence of the dissolution of a country to deal with the individual specific cases stipulated in the chapter on succession extends also to those persons with habitual residence in any country other than the successor State who have the citizenship of this or another country. The proposed regulation is not in harmony with the regulation of citizenship status in the territory of the Republic of Slovenia and the political will which guaranteed, with the last amendments to the Citizenship of the Republic of Slovenia Act, to persons with the citizenship of the States that succeeded the former Socialist Federal Republic of Yugoslavia the possibility of regulating their status, albeit only those persons demonstrating an actual connection with the Republic of Slovenia. In this, the Republic of Slovenia assumes that the persons living outside its territory are not stateless and that they left its territory voluntarily (there were no internal displacements of people in the Republic of Slovenia due to dissolution, nor are there any cases of people leaving the country and claiming international protection due to a change in the status of the State).

Article 9

10. Article 9 enables the successor States to decide on their own whether to make the acquisition of citizenship conditional upon the relinquishing of the previous citizenship, in a manner that does not cause statelessness. The Republic of Slovenia did not make the acquisition of citizenship by the citizens of predecessor States and the recognition of citizenship *ex lege* conditional upon the relinquishing of previous citizenship and no statelessness arose in this respect.

Article 10

11. Article 10 gives the predecessor and successor States the possibility to decide on their own whether the voluntary acquisition of the citizenship of a successor or predecessor State affects citizenship status in the sense that the persons concerned automatically lose their previous citizenship. The legislation of the Republic of Slovenia does not regulate this possibility, but this can undoubtedly influence political decisions regarding the position of the Republic of Slovenia in the event of it concluding bilateral or multilateral agreements with the States that succeeded the Socialist Federal Republic of Yugoslavia regarding the issue of dual or multiple citizenship.

Article 11

12. Article 11 binds States to respect the will of an individual who opts for one or several citizenships, and to recognize the right of option to persons that have an appropriate bond with a country, but only if such persons would otherwise become stateless. Article 11 also binds States to grant citizenship on the basis of an option and to set a suitable deadline for the option. Taking into account the commentary, the right of option is understood broadly, i.e. as a right to decide between one or another citizenship, as a right to the voluntary acquisition of citizenship by declaration, or as a right to the acquisition of citizenship under the law itself. Such commentary taken into consideration, the Republic of Slovenia fulfilled this obligation with articles 19, 40 and 39 of the Citizenship of the Republic of Slovenia Act and there are, as such, no reservations with regard to its application. Regarding the obligation that the State must guarantee the right of option to persons that had a legal bond with the State if they remain without citizenship, there is a need, above all, to define the term "stateless person" in view of the definition adopted in international law (for example in the Convention relating to the Status of Stateless Persons). In view of the fact that the dissolution of the Socialist Federal Republic of Yugoslavia did not cause legal statelessness, the provision alone does not expand the circle of persons to whom citizenship would have to be recognized.

Article 12

13. Article 12 binds States to take all the necessary measures to prevent interference with the integrity and unity of families in the event of acquisition or loss of citizenship. The legislation of the Republic of Slovenia upholds the principle of volition as the basic principle in the acquisition of citizenship within the context of succession. The acquisition of citizenship was totally voluntary, depending on individual will and had no effect on the status of other members of the family (with the exception of minors).

Article 13

14. Article 13 binds States to recognize citizenship to children born after the date of succession who do not obtain any citizenship. The regulation of the acquisition of citizenship of the Republic of Slovenia according to the principle of *ius soli* conforms to the proposed solution (art. 9 of the Citizenship of the Republic of Slovenia Act).

Article 14

15. Article 14 binds States not to degrade the legal status of persons with habitual residence. At the same time, succession must not influence the change of habitual residence. The legal order of the Republic of Slovenia that became effective on 25 June 1991 (*Official Gazette of the Republic of Slovenia*, No. 1/91-1, art. 40) provided, under exceptionally favourable conditions, the possibility of acquiring citizenship to all permanent residents of the Republic of Slovenia who had citizenship of the other republics, that actually lived in Slovenia, provided that they expressed the will to become Slovenian citizens within the legally prescribed deadline. In this way, 171,122 persons acquired Slovenian citizenship. Article 13 of the Constitutional Law for the Implementation of the Basic Constitutional Charter on the Independence and Sovereignty of the Republic of Slovenia (*Official Gazette*

of the Republic of Slovenia, No. 1/91-1) guaranteed these persons, in the acquisition of citizenship, equality of rights and obligations to those of the citizens of the Republic of Slovenia, except the possibility to purchase real estate. Those who missed the deadline for the acquisition of citizenship under article 40 of the Citizenship of the Republic of Slovenia Act or who, on their own decision, did not wish to apply for citizenship under article 40, were able, after 26 February 1992 and under stricter and more numerous conditions, to acquire citizenship under either article 10, 12 or 13 of the Citizenship of the Republic of Slovenia Act. The transitional provision of article 19 of the revised Citizenship of the Republic of Slovenia Act that entered into force on 29 November 2002 enabled the acquisition of Slovenian citizenship for all persons that had permanent residence in the Republic of Slovenia on 23 December 1990 and who, from that date onwards, uninterruptedly continued to actually live in Slovenia. In this way, and under relaxed conditions, those persons who did not regulate Slovenian citizenship under article 40 of the law in 1991 are also enabled to acquire citizenship of the Republic of Slovenia. The above-mentioned revised statutory provision simplified the acquisition of Slovenian citizenship also for all those persons born in the Republic of Slovenia and who have lived in Slovenia since their birth.

Article 15

16. Article 15 binds States to respect the principle of non-discrimination. This principle is consistently respected in the legal regulation and implementation of the provisions of the Citizenship of the Republic of Slovenia Act concerning the realization of the rights to citizenship of the successor States (arts. 19, 39 and 40).

Article 16

17. Article 16 prohibits the arbitrary withdrawal of the citizenship of a predecessor State and the arbitrary refusal of the citizenship of a successor State to persons entitled to acquire it *ex lege* or upon option. Taking into consideration articles 19, 39 and 40 of the Citizenship of the Republic of Slovenia Act, Slovenia did not withdraw the citizenship of nationals of the predecessor States on succession. The consistent compliance with the procedural provisions for the acquisition of citizenship also excludes arbitrariness in decision-making.

Article 17

18. Article 17 binds States to conduct the procedures for the acquisition of citizenship within the context of succession without undue delay and the relevant decisions must be open to administrative or judicial review. Given the procedural rules which must be complied with by an authority when conducting procedures, undue delay should not occur in practice. Every decision of the administrative authority is subject also to judicial control. Practice in the Republic of Slovenia in this area indicates that the majority of applications submitted under article 40 of the Citizenship of the Republic of Slovenia Act were considered within six months, with a relatively low administration tax, such that the prescribed tax presented no obstacle. Procedures lasted longer only in cases based on the third paragraph of article 40 of the Citizenship of the Republic of Slovenia Act, whereby negative decisions were subjected to judicial control, leading to multiple decisions in the administrative procedure.

Article 18

19. Article 18 instructs States to exchange information and to hold consultations regarding the status of persons resulting from succession (issues concerning dual citizenship, prevention of statelessness, family division, military obligations, pensions and other social rights). States should negotiate and conclude bilateral agreements on disputed matters. Regarding the exchange of information concerning citizenship, we are currently bound by the Data Protection Act (*Official Gazette of the Republic of Slovenia*, Nos. 59/99 and 57/01) in relation to the Citizenship of the Republic of Slovenia Act. Readiness to conclude agreements with individual successor States on issues concerning dual or multiple citizenship will depend on political will. At the expert level, the Republic of Slovenia has already cooperated with two successor States regarding the exchange of views on the issue of dual or multiple citizenship, but no bilateral agreement has been signed with any of the successor States. Such a solution would, undoubtedly, be welcome for the Republic of Slovenia, especially concerning dual or multiple citizenship. Assuming that all the States that succeeded the Socialist Federal Republic of Yugoslavia adopt the convention, it would be possible, given the necessary political will, to resolve the individual outstanding matters concerning citizenship status.

Article 19

20. Article 19 does not bind other States to treat a person who has no effective connection with a successor State, which granted citizenship to the person, as a citizen of that country, unless such treatment would lead to the statelessness of that person. A person, who, due to succession, would remain without the citizenship of the country, may be treated as a citizen of the country the citizenship of which he has the right to acquire or maintain. With regard to the term "effective link", used in this provision, several circumstances are taken into consideration (e.g. habitual residence, family ties, the participation of an individual in public life, the centre of performance of life interests). The Republic of Slovenia enabled the citizens of the successor States to acquire Slovenian citizenship, the condition for acquiring Slovenian citizenship *ex lege* being legal citizenship of a predecessor State (art. 39), while the condition for acquiring Slovenian citizenship on the basis of a declaration of will (arts. 19 and 40) was the principle of effective connection, namely registered residence and actually living in the country, i.e. two elements that indicate an effective connection of an individual with the country of which he is a citizen. The consistent compliance with this provision on the part of other States may, in practice, lead to problems, especially with respect to the consular protection of those persons, irrespective of citizenship and of the manner of its acquisition, who after acquiring Slovenian citizenship migrated to another country (most often to a successor State) and who practically have no connection with the Republic of Slovenia, as well as in the case of those persons whose citizenship was recognized *ex lege* but who practically do not have any connections with the Republic of Slovenia.

Part II (arts. 20-26)

21. The second part of the Convention, which is divided into four sections, governs specific situations (categories) of succession, namely the "Transfer of part of the territory", "Unification of States", "Dissolution of a State", and "Separation of part or parts of the territory". Of importance to the Republic of Slovenia is the

section that governs the obligations of States in the case of succession as a result of dissolution (arts. 22 and 23). According to the commentary, the decisive criterion in the determination of status in all cases of succession is the criterion of habitual residence. This criterion, together with the principle of *ius sanguinis*, was complied with and applied also in the legislation of the Republic of Slovenia in resolving citizenship status and in determining the initial body of citizenship upon the collapse of the Socialist Federal Republic of Yugoslavia.

Article 22

22. According to article 22 of the Convention, all successor States are bound to guarantee acquisition of their citizenship, except in the case of the right to use an option, with respect to the following persons:

(a) Persons having habitual residence in its territory;

(b) Persons covered by article 8 of the Convention:

(i) Persons not covered by subparagraph (a), but who have an appropriate legal connection with a constituent unit of a predecessor State which has become part of that successor State;

(ii) Persons who do not have the right to the citizenship of any of the States referred to under subparagraphs (a) and (b) (i), who have habitual residence in the territory of third States, if they were born in a predecessor State or who, before leaving the predecessor State, had their last habitual residence in the territory of a successor State or had any kind of appropriate connection with a predecessor State.

23. On becoming independent, the Republic of Slovenia regulated *ex lege* citizenship in article 39 of the Citizenship of the Republic of Slovenia Act when it constituted the initial body of citizenship. As such, the citizens of the Republic of Slovenia are all persons who had citizenship of the Republic of Slovenia and the Socialist Federal Republic of Yugoslavia under the regulations in force at the time. This guaranteed continuity of the citizenship of all persons who had citizenship of the Republic of Slovenia in the former Socialist Federal Republic of Yugoslavia, irrespective of whether they lived in the territory of the Republic of Slovenia or not. For the citizens of the other republics of the former Socialist Federal Republic of Yugoslavia who, on 23 December 1990, had permanent residence in the territory of the Republic of Slovenia, the law provided that they could apply for Slovenian citizenship under relaxed conditions within six months of the entering into force of the law. This opportunity was taken advantage of by the majority of the permanent residents of the Republic of Slovenia in 1991, with 171,122 persons acquiring Slovenian citizenship. It must also be added that the Republic of Slovenia, through the revised Citizenship of the Republic of Slovenia Act of 2002 enabled, all persons who had not taken advantage of the opportunity of acquiring citizenship in 1991 under article 40 of the Citizenship of the Republic of Slovenia Act, to submit within one year (until 29 November 2003) applications for citizenship under relaxed conditions. There were no legal provisions, either in 1991 or in 2002, requiring these persons to relinquish their previous citizenship; it may be assumed that by acquiring Slovenian citizenship they became dual citizens.

24. Provision (b) (i) of article 22 of the Convention may have consequences for the Republic of Slovenia as it widens the circle of persons to whom the Republic of

Slovenia is obliged to guarantee its citizenship. As may be gathered from the commentary to the quoted article, this provision concerns those persons who have habitual residence in the territory of another successor State as well as those persons who have habitual residence in the territory of third States. If such persons have appropriate connections with a successor State, that country must guarantee them citizenship.

25. Given that one of the fundamental guidelines of the Convention is the principle of the prevention of statelessness, and given that the commentary to the Convention stresses in several places that it does not seek to create dual or multiple citizenship, which may occur due to succession, we believe that it would be necessary to provide for this category also (as in the case of subparagraph (b) (ii)) that these persons have the right to the citizenship of a successor State only if they do not have the right to the citizenship of any of the predecessor States. It should not be forgotten that all the States that succeeded the former Socialist Federal Republic of Yugoslavia introduced into their internal legislations, with which they regulated the field of citizenship, the principle of continuity. This means that all persons who, until the dissolution of the Socialist Federal Republic of Yugoslavia, had had the citizenship of any of the republics, counted as citizens of the successor State concerned. This means that no person who used to have the citizenship of the former Socialist Federal Republic of Yugoslavia became legally stateless after the collapse of the Socialist Federal Republic of Yugoslavia, since the former Socialist Federal Republic of Yugoslavia regulated federal Yugoslavian citizenship, while at the same time every Yugoslav citizen also had the citizenship of one of the republics.

26. In the event that provision (b) (i) of article 22 is adopted in the proposed form, this would in fact mean that every person having an appropriate legal connection with the Republic of Slovenia has the right to Slovenian citizenship, irrespective of whether such person already has one or several citizenships of other successor States. For this reason, we propose that provision (b) (i) of article 22 be revised to stipulate that this category of persons has the right to the citizenship of a successor State with which they have an appropriate legal connection, provided they do not have a right to the citizenship of another successor State. This conforms to the principle of the prevention of statelessness while, at the same time, it prevents multiple citizenship of certain categories of persons. In the opinion of the Ministry of the Interior, a person who does not have habitual residence in a particular country or who has a weak connection with that country is not entitled to acquire its citizenship outright, but only if such person would otherwise remain without citizenship.

27. In the event that the views presented above are accepted, we propose that provision (b) (i) of article 22 read as follows:

> "Persons concerned not entitled to the citizenship of any State concerned under subparagraph (a) having an appropriate legal connection with a constituent unit of the predecessor State that has become part of that successor State."